

IN THE UNITED STATES OF DISTRICT COURT
FOR THE EASTERN DISTRICT OF
PENNSYLVANIA

ROBERT HANDY,

Plaintiff,

v.

DELAWARE RIVER SURGICAL SUITES,
LLC d/b/a BUCKS COUNTY SURGICAL
SUITES, et al.

Defendants.

and

THOMAS E. MACKELL, M.D., LTD. d/b/a
BUCKS COUNTY ORTHOPEDIC
SPECIALISTS,

Nominal Defendant.

CIVIL ACTION

No. 2:19-cv-1028

ORDER

AND NOW, this 9th day of October, 2024, upon consideration of Nominal Defendant Thomas E. Mackell, M.D., Ltd. d/b/a Bucks County Orthopedic Specialists' ("Defendant BCOS") Motion for Leave of Court to Amend and Replead Counterclaims and, if Necessary, to Amend Scheduling Order to Permit Additional Discovery (Doc. No. 386), Plaintiff Robert Handy's Response in Opposition to the Motion to Amend (Doc. No. 388), Defendant BCOS' Reply in Further Support of its Motion (Doc. No. 389), Plaintiff's Supplemental Response in Opposition to the Motion (Doc. No. 397), Defendant BCOS' Response to Plaintiff's Sur-Reply (Doc. No. 398), Report and Recommendation of the Special Master ("the R&R," Doc. No. 399) dated August 29, 2024, Plaintiff's Objections to the R&R (Doc. No. 400), and Defendant BCOS'

Opposition to Plaintiff's Objections (Doc. No. 402), it is **ORDERED** that the Special Master's Report and Recommendation is **APPROVED** and **ADOPTED** and **AMENDED** only as to Plaintiff's discovery request. It is further **ORDERED** as follows:

- 1) Defendant BCOS' Motion for Leave of Court to Amend and Replead Counterclaims and, if Necessary, to Amend Scheduling Order to Permit Additional Discovery (Doc. No. 386) is **GRANTED**. The Clerk shall file the Proposed Amended Counterclaims (Doc. No. 386-3) on the docket.
- 2) Plaintiff's request to take discovery on the timing of BCOS' awareness of any injury for purposes of determining the commencement of the statute of limitations on the Proposed Counterclaims is **GRANTED**. This discovery shall be in accordance with a schedule set by the Special Master and conducted under his guidance in regard to scope.
- 3) The parties may conduct further discovery regarding and limited to the newly-pled counterclaims and the circumstances of the recent document production, if warranted. The parties must confer with the Special Master regarding the scope of further discovery and complete discovery within thirty (30) days as follows:
 - a. Within seven (7) days of the entry of this Order, the parties' counsel must (a) meet and confer regarding additional discovery that they believe is necessary and (b) submit a joint status report to the Special Master. The joint status report must include:

- i. The nature of further discovery requested, i.e., the type of discovery (interrogatories, depositions, etc.) and the number of each, describing whether the parties agree or each parties' position on the need for such discovery. Parties may attach draft discovery requests but should not formally serve parties or non-parties until after the conference with the Special Master in paragraph b. below.
 - ii. To the extent that the parties propose additional depositions: the name(s) of the deponent(s); a statement of whether the deponent has been previously deposed in this case or Case No. 2: 19-cv-2357 (the "USERRA case") and for how long (in days and hours); each parties' position on the proposed length in hours of the addition deposition(s).
 - iii. At least three (3) proposed dates and times for a conference by video with the Special Master in the week following the submission of the joint status report.
- b. The Special Master shall conduct a conference with the parties within seven (7) days of the submission of the joint status report. The parties should be prepared to discuss the joint status report, further requested discovery, and the impact of further discovery on the current scheduling order. The Special Master shall attempt to narrow any areas of disagreement and set parameters for further discovery.
- c. All further discovery must be completed within thirty (30) days of the conference with the Special Master.

- d. The Special Master shall attend any additional depositions and is authorized rule on objections to the scope and to privilege during the depositions.

BY THE COURT:

/s/ Joel H. Slomsky, J.

Joel H. Slomsky, J.